

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the respondent's arguments, the Board finds and concludes that the issue raised by respondent is subject to review from a preliminary order and that the ALJ's order should be affirmed.

This is an appeal from a preliminary hearing order. By statute, not every alleged error is subject to review. The Board can review preliminary hearing orders in which an administrative law judge has exceeded his or her jurisdiction.¹ Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with timely notice and with timely written claim, and
- (4) do certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.²

The issues of whether a worker needs ongoing medical treatment or whether the worker is temporarily and totally disabled are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those issues do, however, comprise questions of law and fact over which an administrative law judge has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

Respondent argues that the ALJ exceeded his jurisdiction by ordering respondent to provide a doctor to treat claimant's mental disorder because it is not directly traceable

¹K.S.A. 44-551(b)(2)(A).

²*Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³*Allen v. Craig*, 1 Kan. App. 2d 301, 303-04, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

to the admittedly compensable physical injury. At a preliminary hearing, an ALJ has the authority to determine whether an injured worker is in need of additional medical treatment.⁴ Since only jurisdictional issues are subject to review in an appeal from a preliminary hearing, the Board has, in previous cases, held that the ability to directly trace psychological or psychiatric injury to a physical injury concerns only the nature and extent of the disability.⁵ As the existence of such causal relationships appeared to be a step removed from the jurisdictional milieu and have no bearing upon the compensability of the claimant's accident and injury, the Board at one time declined to review the question at this stage of the proceedings. However, the Board now considers this issue to be jurisdictional.

The question of whether a psychological condition is directly traceable to the work-related accident is a question that goes to the compensability of the condition or injury. Stated another way, it gives rise to a disputed issue of whether the injury, in this case a psychological condition, arose out of and in the course of the employment. The Board's jurisdiction should not rest on whether the injury is physical versus mental or emotional. Furthermore, making such a distinction can have the undesired effect of delaying needed treatment. Accordingly, the Board finds it has jurisdiction of this appeal on the limited question of whether claimant has a psychological condition that is directly traceable to his work-related accident and the resulting physical injury.

The ALJ determined that claimant was in need of additional medical treatment and authorized claimant's treating psychiatrist, Gilbert R. Parks, M.D., to continue providing treatment. The ALJ found it uncontroverted that claimant suffers from post-traumatic stress disorder (PTSD) as a result of the shooting that occurred at work. As for whether the PTSD is attributable to claimant's being shot or instead to his having witnessed his co-workers being murdered, the ALJ determined that it was due to the gunshot wound.

The claimant testified that within a couple of days of the incident, he began having nightmares about the attack, and conscious episodes of reliving the incident. He said he is afraid to return to the workplace, and afraid to be around people, generally. When he thinks about the attack, he experiences pain at the wound site. On his own, the claimant sought psychiatric treatment from Dr. Parks. The doctor's January 3, 2005 report related the circumstances of the claimant's injury, the claimant's psychological symptoms, and concluded that the claimant has post-traumatic stress disorder. Dr. Parks recommends ongoing treatment for the disorder, perhaps for several years, and said the claimant is incapable of working. The respondent had the claimant examined by a psychologist, Dr. Caffrey, who also

⁴K.S.A. 44-551 and K.S.A. 44-534a.

⁵See, e.g., *Eaton v. Coleman Company, Inc.*, No. 205,158, 1998 WL 695373 (Kan. WCAB Sept. 21, 1998); *Gilman v. Olathe Medical Center*, No. 211,937, 1997 WL 377940 (Kan. WCAB June 18, 1997). But see *Stallbaumer v. DeBruce Grain, Inc.*, No. 236,114, 1998 WL 921335 (Kan. WCAB Dec. 10, 1998).

concluded that the claimant has PTSD, and recommended the claimant continue treatment with Dr. Parks.

The standard for whether a psychological injury, or traumatic neurosis, is compensable under the workers compensation act is that the psychological injury must be directly traceable to a compensable physical injury, *Gleason v. Samaritan Home*, 260 Kan. 970, 926 P.2d 1349 (1996). At first glance, it is hard to imagine a clearer case of traumatic neurosis related to a physical injury than the present one. The respondent argued that the medical evidence did not establish that the claimant's PTSD was traceable to the arm injury. It was true that neither Dr. Parks nor Dr. Caffrey wrote a sentence specifically saying that the claimant's PTSD was due to the gunshot wound, but that was the obvious meaning of their reports, perhaps too obvious to have to spell out. Dr. Caffrey did comment that the claimant has inappropriately redirected his anger about the shooting to the respondent via the claimant's perception that the respondent has not shown him sufficient empathy or understanding. However, Dr. Caffrey did not indicate that the claimant's symptoms of PTSD arose from anything other than the shooting itself.⁶

Claimant, by his testimony at the preliminary hearing, seems to attribute his PTSD symptoms to his physical injury.

Q. Are there any other difficulties that you've experienced as a result of being shot on July 2nd of last year, Mr. Coggs.

A. Oh, yes.

Q. Tell the Court what those were.

A. Shortly afterwards it was just sleepless nights, numerous nightmares, and I didn't feel, it didn't seem like my arm was ever going to heal. But eventually it started healing but I would keep getting sharp pains in it, especially when I would remember what happened. And it just, anything would spark it and my arm may not have been hurting prior, but every time I would relive it my arm would just start hurting again where the bullet, where I got shot.⁷

Furthermore, the Board does not so narrowly construe the requirement that the emotional or mental injury be directly traceable to the physical injury so as to require that

⁶Order (Mar. 30, 2005).

⁷P.H. Trans. at 16.

the factfinder must disregard the manner in which the physical injury occurred. Based on the record compiled to date, the Board agrees with the ALJ and likewise finds that claimant has a psychiatric condition that is directly traceable to his work-related injury.

WHEREFORE, the Appeals Board affirms the Order entered March 30, 2005, by Administrative Law Judge Kenneth J. Hursh.

IT IS SO ORDERED.

Dated this _____ day of July 2005.

BOARD MEMBER

c: Terry Beck, Attorney for Claimant
Mark E. Kolich, Attorney for Self-Insured Respondent
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director